

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NEIL GAIMAN and MARVELS AND
MIRACLES, LLC.,

Plaintiffs,

-vs-

TODD MCFARLANE, TODD MCFARLANE
PRODUCTIONS, INC., TMP INTER-
NATIONAL, INC., MCFARLANE
WORLDWIDE, INC. and IMAGE
COMICS, INC.,

Defendants.

03-1461

No. ~~DOCKET~~ - 0048-S **78**
~~NUMBER~~
U.S. DISTRICT COURT
WEST. DIST. OF WISCONSIN

AUG - 1 2002

FILED/RECEIVED
JOSEPH W. SKUPNIEWITZ, CLERK
CASE
NUMBER

DEPOSITION OF TERENCE D. FITZGERALD

Phoenix, Arizona
June 18, 2002
10:55 a.m.

U.S.C.A. - 7th Circuit
FILED

NOV 26 2003 JC

GINO J. AGNELLO
CLERK

DOC. # _____

Prepared for:

U.S. DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
(Original)

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3 THE DEPOSITION OF TERENCE D. FITZGERALD,
4 taken at 10:55 a.m. on June 18, 2002, at the offices
5 of Brown & Toleu, Ltd., 101 West Adams Street, Phoenix,
6 Arizona, before PAUL GROSSMAN, a Notary Public and
7 Certified Court Reporter #50028 in and for the State of
8 Arizona, pursuant to the Federal Rules of Civil
9 Procedure.

10 The plaintiffs were represented by their
11 attorneys, Foley & Lardner, by Jeffrey A. Simmons, Esq.

12 The defendants Todd McFarlane were
13 represented by their attorneys, Blackwell, Sanders,
14 Peper, Martin, L.L.P., by Pete Salsich, III, Esq.

15 The defendant Image Comics was represented by
16 its attorneys, Brobeck, Phleger & Harrison, LLP, by
17 Matthew C. Lapple, Esq.

18 Also present was Kenneth F. Levin, Esq.
19
20
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22
23
24
25

Phoenix, Arizona

June 18, 2002

10:55 a.m.

TERENCE D. FITZGERALD,
called as a witness herein, having been first duly
sworn, was examined and testified as follows:

EXAMINATION

BY MR. SIMMONS:

Q. Could you state your name for the record,
please?

A. Terence David Fitzgerald.

Q. And where do you live?

A. I live in Los Angeles, California.

Q. Have you ever given a deposition before?

A. Yes, once.

Q. When was that?

A. Two years ago. I'm guessing.

Q. Is this the Tony Twist case?

A. Tony Twist case. It might have been three
years ago. I don't remember.

Q. I'll just go through some of the basic ground
rules for the deposition.

1 A. Okay.

2 Q. I'm going to ask you a series of questions.
3 I'll try to make my questions clear. If they are not
4 clear, feel free to ask me to rephrase the question.
5 Otherwise if you answer my question I'm just going to
6 assume that you understood it.

7 We'll try not to talk over each other so the
8 court reporter can get everything down. The main goal
9 here is to make sure the court reporter can get
10 everything, so when I ask you a question try not to nod
11 your head or say uh-huh or un-unh because he won't be
12 able to get that down.

13 Any other questions you have about the
14 deposition process?

15 A. No. I think I'm good.

16 Q. Okay. Did you do anything to prepare for the
17 deposition other than talking to your attorney? I don't
18 need to hear about that.

19 A. No.

20 Q. Did you review any documents in preparation
21 for this?

22 A. One document.

23 Q. What document was that?

24 A. I don't know what to call that document.

25 MR. SALSICH: Let's go off the record for a

1 second.

2 MR. SIMMONS: Sure.

3 (Discussion off the record.)

4 BY MR. SIMMONS:

5 Q. Okay. Can you just go through your
6 employment history for me?

7 A. Sure. All together or --

8 Q. Well, did you attend college?

9 A. Yes, I did.

10 Q. Okay. Why don't you give me your post
11 college employment?

12 A. Okay. I went to college from '90 -- I
13 graduated in '92, so I guess I would have started in
14 '87. Graduated high school in '86, went to college in
15 '87. That's right. Then I took a couple semesters off.
16 I went back in '88.

17 After I graduated in April of '92 I moved to
18 Portland, Oregon to start working with Todd at Todd
19 McFarlane Productions. It was just the two of us.

20 Q. Was Todd McFarlane Productions, was that
21 located in Portland at the time?

22 A. Uh-huh. Yes. And then I worked there. We
23 subsequently moved down here to Phoenix. I still worked
24 for TMP.

25 And then in February of '98 I moved to Los

1 Angeles and we formed Todd McFarlane Entertainment that
2 we refer to as TME.

3 Q. What does Todd McFarlane Entertainment do?

4 A. We produce television feature films, music
5 videos.

6 Q. Are you also employed by TMP?

7 A. Currently?

8 Q. Currently, yes.

9 A. No.

10 Q. So when you went to McFarlane Entertainment
11 in '98 is that when you left TMP?

12 A. Yes, exactly.

13 Q. Have you worked for any other companies that
14 Todd McFarlane is associated with?

15 A. No.

16 Q. What's your position at McFarlane
17 Entertainment?

18 A. President and COO.

19 Q. Have you held any other positions there?

20 A. At TME?

21 Q. Yes.

22 A. No.

23 Q. What was your position in the fall of '92?
24 You were working for TMP in the fall of '92?

25 A. In the fall of '92 I was working with Todd.

1 I didn't have a title.

2 Q. Do you remember how many employees TMP had at
3 that time?

4 A. In the fall of '92 I would guess just the two
5 of us.

6 Q. What were your duties back in '92 when you
7 were working there?

8 A. Everything from accounting to janitorial, to
9 answering the phones, to making copies, to doing
10 background art work, to talking and dealing with the
11 inkers -- or not the inkers, the colorists, the
12 letterers, the film houses, the printer. I guess that
13 would be it.

14 Q. So at this time in '92, that's shortly after
15 Todd had started publishing the Spawn series of comic
16 books?

17 A. Yes. That was April of '92 he started.

18 Q. And during the fall of '92 did you or Todd
19 try to recruit some writers, outside writers, to come
20 author issues of Spawn?

21 A. Yes. Todd did.

22 Q. Were you involved at all in the recruiting of
23 those writers?

24 A. Recruiting, no.

25 Q. Who were some of the writers that Todd got to

1 author issues of Spawn at that time in '92 or '93?

2 A. There was four. Alan Moore, Neil Gaiman,
3 Dave Simm and Frank Miller.

4 Q. Do you remember what Todd -- anything about
5 what Todd did to try to get Neil Gaiman to author an
6 issue of Spawn magazine, Spawn comic book?

7 A. He talked to him on the phone. I don't
8 specifically know what you mean.

9 Q. Do you remember, did Todd ever tell you what
10 he was offering Neil in exchange for Neil coming to
11 write an issue of Spawn?

12 A. Everyone was to receive the same dollar
13 amount.

14 Q. And what was that dollar amount?

15 A. I believe it was 100,000.

16 Q. Do you know how that figure was arrived at?

17 A. No.

18 Q. So, did Todd tell you anything specific about
19 the terms of his deal with Neil?

20 A. In what regard?

21 Q. Anything other than that he might have --
22 that he was to receive \$100,000? Did Todd tell you
23 anything else about what terms there might be of his
24 agreement with Neil?

25 A. Just that Neil was looking to match a deal

1 that he had previously with DC, that he didn't want to
2 try to take a pay cut.

3 Q. And did you have any understanding what that
4 deal was?

5 A. No.

6 MR. SIMMONS: This is a document heads up for
7 you that we haven't produced yet, but it should be.
8 Actually, you may have gotten it or Todd may have gotten
9 it yesterday.

10 Mark this as 11.

11 (Deposition Exhibit Number 11 was then
12 marked for identification.)

13 THE WITNESS: Oh, there's my title right
14 there, Production Director.

15 BY MR. SIMMONS:

16 Q. Okay. Do you recognize this document?

17 A. No, not at all.

18 Q. That's your name at the bottom of the
19 document, correct?

20 A. Oh, yes, absolutely.

21 Q. Any reason to think that you didn't author
22 this document?

23 A. No.

24 Q. The text of the letter talks about, discusses
25 enclosing a check for \$10,000. Do you remember sending

1 a check for \$10,000 to Neil Gaiman?

2 A. I remember sending a check or two, but I
3 don't remember specifically what the dollar amount was.

4 Q. Do you remember sending any advances to Neil
5 Gaiman for his authoring Spawn 9?

6 A. I don't.

7 Q. In the body of the document you state that
8 "you'll receive -- the final installment you'll receive
9 when we receive the final royalties."

10 Do you know what that -- what that final
11 installment was to be?

12 A. No.

13 Q. Do you know what the final royalties are that
14 are mentioned?

15 A. Meaning?

16 Q. In this letter you refer to "when we receive
17 the final royalties."

18 A. Right.

19 Q. Do you know what those final royalties are?

20 A. I would assume that meant our check from
21 Image.

22 Q. But you don't recall?

23 A. Yes, I don't.

24 Q. Do you recall how TMP was compensated by
25 Image at that time for the comic books that it

1 published?

2 A. We received a check based on sales of the
3 book, but I don't know the general accounting.

4 Q. Was it generally a percentage of the price
5 that was received for the sales?

6 A. I honestly don't know. That was Todd.

7 Q. Do you know if there's anything in writing
8 setting forth the terms of the agreement between Todd
9 and Neil, the agreement that they had back in '92 or
10 '93?

11 A. Anything in writing?

12 Q. Yes.

13 A. No.

14 Q. Were you involved in cutting the checks that
15 went out to Neil for this? I think you actually
16 testified earlier that you remember sending a couple of
17 checks out to him.

18 A. Yes.

19 Q. Do you remember any documents that you may
20 have referred to at that time to figure out what the
21 proper amount was to send to Neil?

22 A. No.

23 Q. Do you recall how you decided to send him
24 \$10,000?

25 A. I would have been told by Todd.

1 MR. SIMMONS: This will be number 12.

2 (Deposition Exhibit Number 12 was then
3 marked for identification.)

4 BY MR. SIMMONS:

5 Q. Take a look at this document and just let me
6 know when you've reviewed it.

7 A. Okay.

8 Q. Do you recognize this document?

9 A. Not at all.

10 Q. You don't remember -- you don't remember
11 receiving this document?

12 A. No.

13 Q. You don't remember ever seeing it before?

14 A. No.

15 Q. Looking at it, it looks to me like it's the
16 script, Neil Gaiman's proposed script for Spawn 9. Do
17 you remember receiving a script from Neil Gaiman for
18 Spawn 9?

19 A. I remember receiving it. I couldn't honestly
20 recall if this is specifically it, but I do remember
21 receiving one.

22 Q. Given what your duties were at that time,
23 would it be logical that you would be the one that
24 received a script for Spawn 9 from Neil?

25 A. Yes, absolutely.

1 Q. Do you recall Neil sending any sketches in
2 that accompanied the script?

3 A. No.

4 Q. Do you recall what happens -- what the
5 process was after you received the script for Spawn 9?

6 A. I would have put it on Todd's desk to read
7 it.

8 Q. And do you recall if any revisions were made
9 by you or Todd to Neil's script?

10 A. I would not have ever done anything like
11 that, no.

12 Q. Why not?

13 A. I just didn't -- I was not -- my job was --
14 let me rephrase that.

15 It was not my job to do anything creatively
16 in the writing or the art work of the book.

17 Q. So any changes would have been made by Todd?

18 A. Made by Todd.

19 MR. SIMMONS: This is number 13.

20 (Deposition Exhibit Number 13 was then
21 marked for identification.)

22 BY MR. SIMMONS:

23 Q. Take a look at Exhibit 13. Do you recognize
24 this document at all?

25 A. No.

1 Q. Is that your handwriting at the bottom,
2 "Sincerely, Terry"?

3 A. Yes.

4 Q. Any reason to believe that this is a note
5 that --

6 A. No.

7 Q. -- someone other than you sent?

8 A. No.

9 Q. In the text of this document it says, "Todd
10 and I quickly, very quick like, played the numbers and
11 are guessing that your take will be about \$100,000."

12 And I know you said you don't recognize the
13 document, but do you recall making a calculation of what
14 Neil's payment might be for Spawn 9, for his work on
15 Spawn 9?

16 A. No.

17 Q. Looking at this document, earlier you
18 testified I think that it was your understanding that
19 all the guest writers that came in for Spawn were going
20 to receive a flat \$100,000. Is that -- am I accurately
21 characterizing your testimony? Tell me if I'm not.

22 A. I believe that's what I said.

23 Q. Okay. Looking at this document, it seems to
24 read as though it's not a flat \$100,000, that there's
25 some -- some calculation going on. I don't think -- I

1 don't know what goes into that calculation.

2 Looking at this document, does that change --
3 does that alter your recollection of what the
4 compensation was for the guest writers coming in?

5 A. No.

6 Q. Is it possible that the compensation was
7 based on a percentage of the sales for each issue?

8 A. I honestly don't remember.

9 Q. That's fine.

10 So, did you -- after Spawn 9 was published
11 did you continue to serve as a contact with Neil Gaiman
12 or as one of TMP's contacts with Neil Gaiman for Neil
13 Gaiman's work?

14 A. After Spawn 9 I wouldn't believe so. I
15 don't -- I wouldn't believe so.

16 Q. Kind of an awkward question, but after Spawn
17 9 it's my understanding that Neil contributed some text
18 to issue 26 of Spawn. Is that correct?

19 A. I don't know.

20 Q. Is it your understanding that Neil authored
21 the scripts for a three-part Angela series of comic
22 books?

23 A. That was between him and Todd. I don't know.
24 I wasn't dealing in the creative arena at that point.

25 MR. SIMMONS: Okay. Mark this as 14.

1 (Deposition Exhibit Number 14 was then
2 marked for identification.)

3 BY MR. SIMMONS:

4 Q. Do you recognize this document, Exhibit 14?

5 A. No.

6 Q. Is this your handwriting?

7 A. Yes.

8 Q. Okay. Any reason to believe that you -- that
9 someone other than you sent this document out?

10 A. No.

11 Q. And the text here says, "Just a friendly
12 reminder that Greg eagerly awaits the Angela project."

13 Looking at this document, does that refresh
14 your recollection at all as to whether you served as a
15 contact with Neil during his work on the Angela series
16 of comics?

17 A. June 9th there was probably three of us in
18 the office, so I'm sure I probably would have seen
19 whatever came in at that point.

20 Q. Do you recall having any other conversations
21 or sending any other documents to Neil Gaiman at this
22 time period? And by "this time period" I mean the 1993,
23 1994 time period.

24 A. No.

25 Q. Do you have any understanding regarding how,

1 how, if at all, Neil Gaiman was to be compensated for
2 his work on the Angela series of comic books?

3 A. No.

4 Q. Who would know that?

5 A. Todd.

6 Q. I thought you testified earlier that you
7 handled the accounting for TMP. Is that correct?

8 A. I was -- yes, I was told to write checks.
9 What I mean by accounting, I mean keeping a check
10 registry and writing checks. Not your traditional
11 accounting role.

12 MR. SIMMONS: Mark this as 15.

13 (Deposition Exhibit Number 15 was then
14 marked for identification.)

15 BY MR. SIMMONS:

16 Q. Do you recognize this document?

17 A. No.

18 Q. Your handwriting?

19 A. Yes, for sure.

20 Q. No reason to believe that someone other than
21 you sent this letter out?

22 A. No.

23 Q. The first line of the letter says, "They
24 conveniently 'forgot' to send them to you." Do you have
25 any recollection of who "they" are, who the "they"

1 that's referenced there is?

2 A. No clue.

3 Q. Any idea what it was that whoever it was
4 forgot to send to Neil?

5 A. No.

6 Q. And so I take it you don't know who it is you
7 want to kill here as well?

8 A. This was somebody I wanted to kill. No.

9 MR. SALSICH: For the record, I suppose I
10 should at least point out that this is a reference to
11 what appears to be a joking remark in the text of
12 Exhibit 15 itself and not any other off the record
13 conversations anybody here has had about killing
14 anybody.

15 THE WITNESS: I'm a Canadian and a pacifist.

16 MR. SALSICH: Duly noted.

17 MR. SIMMONS: Fair enough.

18 Q. Do you recall sending any checks to Neil
19 Gaiman relating to any work on the Angela series or
20 Spawn 26?

21 A. No.

22 Q. Were you involved in the purchase of any
23 assets from Eclipse Comics as a result of the Eclipse
24 Comics bankruptcy?

25 A. Yes.

1 Q. Can you just generally describe for me what
2 your role was in that purchase?

3 A. I was on the phone. It was a live auction
4 that was done over the phone and I was bidding on behalf
5 of TMP.

6 Q. And what was it you were bidding on?

7 A. It was a bankruptcy sale. It was whatever
8 was included in the bankruptcy sale of the Eclipse.

9 MR. SIMMONS: Mark this as 16.

10 (Deposition Exhibit Number 16 was then
11 marked for identification.)

12 BY MR. SIMMONS:

13 Q. Take your time and look that over.

14 A. This is all one document or --

15 Q. I believe so. But I guess I don't know.

16 This is something that your company produced.

17 Done looking at it?

18 A. Yes.

19 Q. Okay. So why don't we take it page by page,
20 I guess. Do you recall -- the first page of Exhibit 16,
21 do you recall receiving this document?

22 A. Yes, I do.

23 Q. Okay. Then flipping back, do you recall
24 whether the -- why don't we go page by page. Do you
25 recall whether each of these pages were attached to this

1 letter when you received it?

2 A. These pages with the inventory description
3 were because I remember seeing these and reviewing
4 these.

5 Q. The inventory description looks like it goes
6 through -- I'm looking at the bottom right-hand corner,
7 TM 1452. Is that right?

8 A. Yes.

9 Q. Flip to the next page, 1453. Do you recall
10 seeing that document?

11 A. This I do not.

12 Q. Go to the next page, TM 1454. Do you recall
13 seeing that document?

14 A. No, I don't.

15 Q. The next page 1455, and from 1455 through
16 1461, it looks like that's all one document.

17 A. Yes. No, I don't remember seeing this.

18 Q. Do you recall seeing this document -- by
19 "this" I mean TM 1455 through TM 1461 -- do you recall
20 seeing that document at any other time?

21 A. No.

22 Q. This TM 1455 through TM 1461 appears to be an
23 agreement between Eclipse comics and Neil Gaiman. I'm
24 basing it on the first paragraph of the document. I
25 think you flipped back one page too many. I'm sorry.

1 Do you ever recall seeing any written
2 agreements between Neil Gaiman and Eclipse, Eclipse
3 Enterprises or Eclipse comics?

4 A. No.

5 Q. And then turning to the last page of Exhibit
6 16, which is TM 1462, it looks to be a written agreement
7 between Alan Moore and Neil Gaiman and Mark Buckingham.
8 Have you ever seen this document before?

9 A. Not that I can recollect.

10 Q. Can you generally describe for me what
11 documents, if any, you produced in this case?

12 And I don't know if you're aware that Neil
13 Gaiman and Marvels and Miracles, the plaintiffs in this
14 case, served document requests on the defendants in this
15 case and the documents that we are referring to are some
16 of the documents that were produced in response to
17 those.

18 Did you participate in a production of any of
19 the documents in this case?

20 A. No.

21 Q. Did you ever -- were you ever asked to search
22 your files --

23 A. Yes.

24 Q. -- to look for documents for this case?

25 A. Yes.

1 Q. Who asked you to do that?

2 A. I think it was Mike Kahn.

3 Q. Okay. And I don't need to hear the substance
4 of your conversation with Mike.

5 Did you end up producing any documents from
6 your files?

7 A. No.

8 Q. As a result of that, did you look for any
9 documents in your files?

10 A. No, because I know I didn't have any.

11 When I moved from Phoenix to Los Angeles I
12 left anything that was comic related behind to start the
13 entertainment company so I didn't have anything in
14 regards to comics, licensing. That was all left.

15 Q. And you didn't come out to Arizona to help
16 sort through files --

17 A. No.

18 Q. -- when they were producing them?

19 A. No.

20 Q. Do you know why TMP was interested in
21 purchasing the assets of Eclipse comics?

22 A. Todd wanted to expand our catalog of
23 characters.

24 Q. And how would purchasing the Eclipse assets
25 accomplish that?

1 A. Eclipse had several different characters that
2 were attached to it.

3 Q. Do you recall what some of those characters
4 were?

5 A. Not really. I mean Black Terror is one. Air
6 Boy would be another. I know there was a few others,
7 but --

8 Q. Is Miracleman one of those characters?

9 A. It would be one.

10 Q. Did you have any understanding as to what
11 rights, if any, Eclipse comics had to the copyrights or
12 trademarks in the Miracleman character?

13 A. No.

14 Q. Has anyone ever told you, anyone other than
15 your attorneys, told you that Eclipse comics didn't
16 possess the full rights to the copyrights or trademarks
17 to Miracleman?

18 A. Did anyone ever tell me that?

19 Q. Yes. Have you ever been informed by anyone
20 either in writing or spoken that Eclipse comics doesn't
21 own all the rights?

22 A. No. Other than I read Neil said that he
23 didn't believe that.

24 Q. Did Todd ever tell you that he thought
25 Eclipse might not own all the rights and the copyrights

1 or trademarks to Miracleman?

2 A. No.

3 Q. Did you ever talk to anybody associated with
4 Eclipse Comics to find out what rights they might have
5 to the Miracleman character?

6 A. No.

7 Q. Ever talk or write to Dean Mullaney about the
8 rights to Miracleman?

9 A. I might have talked to Dean. I don't
10 specifically remember about what.

11 Q. Do you think you did talk to Dean Mullaney?

12 A. I might have.

13 Q. About Miracleman?

14 A. No. It would have been more about the sale
15 and whether or not what was listed on the inventory was
16 correct.

17 Q. Did you talk to Dean Mullaney about those
18 issues?

19 A. I believe I did, yes.

20 Q. What do you recall about that conversation?

21 A. I think we went through the inventory list.

22 Q. That's all you remember?

23 A. Yes.

24 Q. Ever talk to Dez Skinn about any rights
25 Eclipse may have to Miracleman?

1 A. I have no idea who that is.

2 Q. Ever talk to Alan Moore about Eclipse's
3 rights to Miracleman?

4 A. No.

5 Q. Or any writing or any other form of
6 communication with Alan Moore about Miracleman?

7 A. No.

8 Q. The same question for Mark Buckingham?

9 A. I never talked to the gentleman.

10 Q. How about Neil Gaiman?

11 A. Neil?

12 Q. Yes.

13 A. About Miracleman?

14 Q. About Miracleman.

15 A. No.

16 MR. SIMMONS: Mark this.

17 (Deposition Exhibit Number 17 was then
18 marked for identification.)

19 BY MR. SIMMONS:

20 Q. Take a look at that and let me know when
21 you're done.

22 A. Uh-huh. Okay.

23 Q. Do you recall this document?

24 A. Yes.

25 Q. Is this a letter you wrote?

1 A. Yes.

2 Q. It looks like --

3 A. Well, I wrote the first page and the last
4 page. Every page in between I did not write.

5 Q. Okay. Any idea who did write that?

6 A. No.

7 Q. And it looks to me like this letter --
8 correct me if I'm wrong, but this letter is just
9 directing someone to go to Eclipse comics and pick up
10 various pieces of property. Is that accurate?

11 A. I don't know if the location was Eclipse
12 comics or some bankruptcy holding. Physically I don't
13 remember.

14 Q. Or were you directing someone to just go
15 pickup Eclipse's assets wherever that may be?

16 A. Yes.

17 Q. And this -- by "this" I mean 1441 to 1443.

18 A. Yes.

19 Q. Is that document just an inventory of the
20 assets that you expected to be there to pick up?

21 A. That's what it looks like.

22 Q. Do you recall whether you got everything on
23 this list, whether everything was there?

24 A. No.

25 Q. Do you remember anything being missing?

1 A. I didn't go through it, so I don't know.

2 Q. So you never -- did you -- was all this stuff
3 brought back to TMP's offices?

4 How did you handle the physical property that
5 was being picked up?

6 A. I believe it was sent to our office in
7 Michigan, but I'm not a hundred percent sure.

8 Q. But you never went through to see if
9 everything was there or not?

10 A. No.

11 Q. I'm going to jump ahead a little bit to 1997.
12 Actually, you know what, why don't we take a break right
13 now and I can look at this draft. That would make
14 sense.

15 MR. SALSICH: Sure, sure.

16 (Whereupon, a short recess was then had from
17 11:32 a.m. until 11:39 a.m.)

18 BY MR. SIMMONS:

19 Q. Okay. We'll move up to 1997.

20 Were you aware that in 1997 Neil Gaiman and
21 Todd McFarlane were attempting to negotiate an agreement
22 regarding their respective rights in the Miracleman
23 character and the Angela character, Cogliostro, Medieval
24 Spawn and Miracleman?

25 A. No. After all that introduction --

1 Q. Yes. Sure. The question is, were you aware
2 in 1997 that Todd McFarlane and Neil Gaiman were
3 negotiating an agreement regarding their respective
4 rights in those characters that I just rattled off?

5 A. I know that Todd and Neil were discussing
6 issues, but I was not privy to their conversations.

7 Q. You didn't participate in any conversations?
8 You weren't -- you didn't participate in any
9 conversations where both Neil and Todd were present
10 discussing those issues?

11 A. No.

12 Q. Did you have any discussions with Neil
13 regarding his rights in any of those characters?

14 A. Not that I recall.

15 Q. Did you ever discuss possible terms of an
16 agreement with Neil -- excuse me. Did you ever discuss
17 the terms of a possible agreement between Neil and Todd
18 with Todd? Does that question make sense?

19 A. Can I have that once again?

20 Q. Sure. Yes. Did you ever discuss with Todd
21 the terms of a potential agreement between Todd and
22 Neil?

23 A. I would say no. I was asked to draft an
24 agreement.

25 Q. When were you asked to draft an agreement?

1 A. I couldn't give you the date.

2 Q. Give me a rough time-frame?

3 A. Some time in '97.

4 Q. Can you give me a month?

5 A. No.

6 MR. SIMMONS: Okay. Why don't we mark this
7 as Exhibit 18.

8 (Deposition Exhibit Number 18 was then
9 marked for identification.)

10 THE WITNESS: Okay.

11 BY MR. SIMMONS:

12 Q. Okay. Did you author any part of Exhibit 18?

13 A. Yes.

14 Q. Do you know who is -- there's some
15 handwritten wording on here. Do you know whose
16 handwriting that is?

17 A. I believe that would be Todd's, but he would
18 be better suited at recognizing his handwriting.

19 Q. Sure. So, did you author all the typewritten
20 portions of Exhibit 18?

21 A. Well, yes or no. Because this was an
22 agreement, the framework of this agreement, meaning not
23 any particulars but sort of the basic legal language, I
24 borrowed from two other agreements and cobbled them
25 together to create our own.

1 Q. Do you remember which agreements those were
2 that you borrowed from?

3 A. They were from studios. I can't remember
4 which ones. I mean movie studios.

5 Q. You don't recall which agreements you used --

6 A. No.

7 Q. -- as a basis for your agreement?

8 A. This was a standard that we had used for a
9 myriad of different licensing arrangements.

10 Q. But there are specific percentages referenced
11 in various parts of the agreement?

12 A. Yes.

13 Q. Where did you get -- for example, on page 1
14 it talks about domestic comic books, 5 percent of net,
15 licensing, 5 percent of net, those percentages; do you
16 recall where you got those from?

17 A. No.

18 Q. Did Todd tell you to put those in?

19 A. I would assume that. If I had to guess, that
20 would be my assumption.

21 Q. Did Todd give you any written documents from
22 which to work when you were drafting this agreement?

23 A. I don't believe so.

24 Q. He didn't give you any documents that
25 summarized his agreement with Neil?

1 A. No.

2 Q. What he believed to be his agreement with
3 Neil?

4 A. I don't believe so.

5 Q. I think this has been marked as Exhibit 2.
6 Take a look at Exhibit 2. Just let me know when you've
7 reviewed it.

8 A. Okay.

9 Q. Ever see Exhibit 2 before?

10 A. I don't recall seeing it.

11 Q. Do you recall Todd ever -- Todd or anybody
12 else at TMP or any company controlled by Todd providing
13 you with any sort of correspondence from Neil Gaiman
14 regarding his potential agreement with Todd?

15 A. No.

16 MR. SIMMONS: I'll mark this as 19.

17 (Deposition Exhibit Number 19 was then
18 marked for identification.)

19 BY MR. SIMMONS:

20 Q. Do you recall ever seeing Exhibit 19 before?

21 A. No.

22 Q. You don't recall Todd ever supplying you with
23 a copy of this document at any point?

24 A. No.

25 MR. SIMMONS: Mark this as 20.

1 (Deposition Exhibit Number 20 was then
2 marked for identification.)

3 BY MR. SIMMONS:

4 Q. Take a look at 20.

5 A. Okay.

6 Q. Okay. Ever see Exhibit 20 before?

7 A. No.

8 Q. Todd never supplied you with a copy of this
9 document?

10 A. No.

11 Q. Turning back to Exhibit 18.

12 A. Okay.

13 Q. Yes, which is the contract; did you draft
14 more than one version of this document?

15 A. I believe so.

16 Q. Okay. Why don't you explain to me everything
17 you can remember about the drafting of this document and
18 any prior versions or any revisions to it?

19 A. Oh, that I couldn't recall what the
20 differences would be.

21 Q. Okay. Do you recall -- you drafted this
22 document at the request of Todd, correct?

23 A. Yes.

24 Q. Okay. Did you supply Todd with -- did Todd
25 ever get back to you with comments on your draft?

1 A. Of which draft?

2 Q. Of any draft of this agreement.

3 A. I would assume he would have.

4 Q. Do you recall ever making revisions to the
5 agreement as a result -- revisions to the written
6 document as a result of comments that Todd made?

7 A. No, I don't recall making any changes.

8 Q. Do you recall any suggestions for revisions
9 that Todd may have given you?

10 A. No, other than what I read here in this
11 document that he's put in the margins.

12 Q. Turning to the last page of Exhibit 18, the
13 summary table of what looks like some sort of accounting
14 of revenue of units sold, did you create this document?

15 A. No.

16 Q. Do you know who did?

17 A. No.

18 Q. Do you know what company -- this document
19 refers to Medieval Spawn figure and Angela figure,
20 Cosmic Angela figure and a 13 inch Angela figure. Do
21 you see where I'm referring to in the upper left portion
22 of it?

23 A. Yes.

24 Q. Do you know what company would have been
25 responsible for producing those products --

1 A. Yes.

2 Q. -- back in '97?

3 A. It would have been McFarlane Toys.

4 Q. Okay. And who -- do you know who was the
5 president of McFarlane Toys at that time?

6 A. The president?

7 Q. Rephrase that.

8 Do you know who was in charge of the
9 day-to-day operations of McFarlane Toys at that time?

10 A. I believe it was Paul Burke.

11 Q. Does McFarlane Toys still exist as a company?

12 A. It's an entity owned by a corporation.

13 Q. What corporation owns it?

14 A. Todd McFarlane -- no, God, what is it? I
15 think it's TMP International, Inc.

16 Q. And do you recall whether that same
17 arrangement was in existence back in 1997.

18 A. I believe so.

19 Q. I'm going to refer to Exhibit 8, I believe it
20 is. No, I may be wrong. Exhibit 4. Exhibit 4 and 4A.

21 A. Do I have that or not?

22 MR. SALSICH: I've got copies here I'll show
23 you. That's 4.

24 THE WITNESS: Okay. I'm looking at 4. I
25 haven't read 4A yet. Sorry.

1 BY MR. SIMMONS:

2 Q. Okay.

3 A. Okay.

4 Q. Okay. Do you recognize Exhibit 4?

5 A. No.

6 Q. You don't remember ever seeing a copy of
7 Exhibit 4 before?

8 A. No.

9 Q. Would you turn to the last page of Exhibit 4,
10 please. In the lower right-hand corner it's TM 478.

11 A. Yes.

12 Q. Do you recall seeing this document before?

13 A. No.

14 Q. Okay. Do you recall Sheila Egger ever FAXing
15 you -- FAXing information to you and/or Todd about a
16 potential agreement with Neil Gaiman?

17 A. To me, no. I can't speak for Todd.

18 Q. Okay. Do you recall -- do you recall ever
19 staying at the Sutton Place Hotel?

20 A. Yes.

21 Q. Okay. When do you remember staying there?

22 A. I would assume it would be on the date listed
23 here.

24 Q. Is that the only time you stayed there?

25 A. Yes. I have never been there other than this

1 time.

2 Q. Why were you there at that time, the date
3 referred to in this document?

4 A. I honestly don't remember. Comic book show
5 maybe.

6 Q. And where is that hotel located?

7 A. Looking at the area code, 416, I believe it's
8 Toronto.

9 Q. So, do you recall going to a comic book show
10 in Toronto at this time period, July 29, 1997?

11 A. You know, I was so busy doing a lot of
12 different things at that point, I honestly don't
13 remember.

14 Q. Okay. Is there a regular comic book show in
15 Toronto at this time of year?

16 A. I don't think so.

17 Q. Do you recall ever going to the Sutton Place
18 Hotel the --

19 A. I mean, is that Toronto? Do we know? Do we
20 know where 416 is?

21 Q. I have no idea. No, I don't know.

22 A. Okay.

23 Q. Do you recall anybody else from TMP or any
24 other company that Todd McFarlane is associated with
25 being with you at the Sutton Place Hotel?

1 A. From reading this, it looks like Todd was.

2 Q. But you don't remember anybody else having
3 been there with you?

4 A. No.

5 Q. Do you remember having any discussions with
6 Todd at the Sutton Place Hotel regarding his agreement
7 with Neil Gaiman?

8 A. No.

9 Q. Do you remember receiving any financial
10 information or accounting information from Sheila Egger
11 or anybody else at TMP during the roughly July or August
12 of 1997?

13 A. No. I was too busy working on the movie and
14 the TV show. That was not my job.

15 Q. What movies and TV shows are you referring
16 to?

17 A. Spawn, a live feature film at New Line, and
18 then an animated series on HBO called Todd McFarlane's
19 Spawn.

20 Q. Turning back to Exhibit 18, which is that,
21 the agreement here.

22 A. Yes.

23 Q. The draft agreement.

24 A. Yes.

25 Q. After you drafted Exhibit 18, did Todd or

1 anybody else from TMP come to you with any sort of sales
2 figures or accounting information and ask you to compare
3 it to -- compare it to the draft agreement or ask to
4 discuss with you how the draft agreement might be
5 applied to the accounting information?

6 A. No, no. I'd have no dealing with accounting
7 at that point.

8 Q. Do you ever recall at any point from 1997 on
9 analyzing or reviewing any financial information that
10 might be used or considered to be used in calculating
11 royalties or payments being made to Neil Gaiman?

12 A. No.

13 Q. Who would have been making those sorts of
14 calculations based on your knowledge of the way TMP is
15 organized?

16 A. At what point?

17 Q. In 1997 if someone was to be calculating
18 royalties for an author, for Neil Gaiman.

19 A. Based on?

20 Q. Based upon any sort of written agreement.
21 Who at --

22 A. No. Based on comic books, toys?

23 Q. Comic books.

24 A. Whoever was doing the accounting at that
25 point. It would have been after Julia Simmons, but I

1 don't -- we went through a myriad of accountants in a
2 three year period so I couldn't specifically tell you
3 who it would be. Todd would be best to answer that
4 question.

5 MR. SIMMONS: Mark this as 21.

6 (Deposition Exhibit Number 21 was then
7 marked for identification.)

8 BY MR. SIMMONS:

9 Q. Do you recognize Exhibit 21?

10 A. Yes.

11 Q. Okay. Can you tell me what Exhibit 21 is?

12 A. A letter.

13 Q. Why did you write it? Did you write Exhibit
14 21? Is it a letter from you?

15 A. Yes.

16 Q. Why did you send it out?

17 A. I was asked by Todd to send it out.

18 Q. What did Todd -- can you be more specific
19 about what it was that Todd was telling you to do?

20 A. He was out of town and someone had to write
21 Neil a letter and I sort of was, I guess, next in
22 command and I had obviously a previous relationship with
23 Neil, so just to send him a check.

24 Q. Okay. And then the second line of that -- of
25 this letter says, "Everyone here and at McFarlane Toys

1 are diligently reviewing all accounting to finalize the
2 royalties owed you to date." Have I read that
3 accurately?

4 A. Yes.

5 Q. So, were you involved in reviewing all the
6 accounting --

7 A. No.

8 Q. -- as referred to here?

9 A. No. Strictly writing this letter.

10 Q. Did you talk to any of the people who were
11 reviewing the accounting?

12 A. No.

13 Q. You said Todd was absent during this time
14 period?

15 A. Yes.

16 Q. Were you supervising any of the people doing
17 the accounting during this time period?

18 A. No. He was doing it himself from where he
19 was at.

20 Q. "He" being Todd?

21 A. Yes.

22 Q. Do you recall approximately when you would
23 have sent out Exhibit 21?

24 A. I would assume it was after 7-31-97 since
25 that's the date written on the check stub, but, no, I

1 couldn't give you a specific time-frame.

2 Q. Do you have any sort of point of reference as
3 to when this would have been sent out?

4 And I guess by that I mean did there come a
5 time when you understood that Neil and Todd had reached
6 an agreement regarding their various rights in comic
7 book characters that we have discussed previously?

8 A. No, I was never privy to that.

9 Q. But did you understand that they had reached
10 an agreement?

11 A. No, I was never privy to that.

12 Q. Were you told that -- was it your
13 understanding that \$5,000 was being sent out pursuant to
14 some agreement that had been reached between Neil and
15 Todd?

16 A. No. I was just told to write a letter to
17 accompany the check since Todd was out of town.

18 Q. Todd did not tell you why you were sending
19 out the check?

20 A. No. Which is not uncommon for him.

21 MR. SIMMONS: Okay. Mark this 22.

22 (Deposition Exhibit Number 22 was then
23 marked for identification.)

24 BY MR. SIMMONS:

25 A. Okay.

1 Q. Do you recognize Exhibit 22?

2 A. No.

3 Q. It looks like this document is from Allan
4 Inglis.

5 A. Yes.

6 Q. Do you know who Allan Inglis is?

7 A. Yes.

8 Q. Who is he?

9 A. He was the accountant for TMP International.

10 Q. Do you have any idea what he's writing to you
11 about here?

12 A. I assume that that would be that page that
13 was included in the back of 18.

14 Q. The table at the back of 18?

15 A. Yes. But again I'm not sure. That would be
16 my best guess.

17 Q. Do you have any recollection of ever
18 receiving this FAX from Allan Inglis?

19 A. No.

20 Q. Do you recall having any conversations with
21 Allan Inglis about information that he was supposed to
22 be providing to calculate payments for Neil Gaiman?

23 A. No.

24 Q. Do you have any -- during 1997 or roughly
25 that time period did you contact Allan Inglis on any

1 sort of regular basis?

2 A. On a regular basis, no.

3 Q. Would you have any reason to contact Allan
4 Inglis in that time period?

5 A. I would have been finishing up my licensing
6 chores, so I assume I would have had some conversations
7 with him in regards to us licensing properties and him
8 cutting checks out for creation of action figures, Kiss,
9 that kind of thing.

10 Q. At the bottom of this document, the last two
11 lines of the document, it looks like Mr. Inglis writes,
12 "The other two schedules are calculations to make the
13 bottom line 'come out.'" Do you have any idea what he's
14 referring to there?

15 A. No.

16 Q. The next sentence is, "I do not like them."
17 Do you recall Mr. Inglis ever expressing any -- any
18 sentiment to you that he wasn't happy with the way
19 calculations were being performed?

20 A. No.

21 Q. That he was unhappy with any of the
22 information that was being provided to Todd McFarlane
23 for purposes of Neil Gaiman's payments?

24 A. No.

25 Q. I'll flip back to a previous exhibit.

1 A. Does anyone mind if we take five minutes?

2 MR. SIMMONS: That will be fine.

3 MR. SALSICH: That's fine.

4 (Whereupon, a short recess was then had from
5 12:07 p.m. until 12:15 p.m.)

6 MR. SIMMONS: I'm going to be referring to
7 Exhibits 5 and 6.

8 MR. SALSICH: Okay.

9 BY MR. SIMMONS:

10 Q. Take a look at those.

11 A. Okay.

12 Q. Okay. Do you recognize Exhibits 5 and 6?

13 A. No.

14 Q. Five and/or 6.

15 A. No.

16 Q. You've never seen either one of them before?

17 A. No.

18 Q. Did you have any understanding that anyone at
19 Todd McFarlane Productions was producing a royalty
20 report for Neil Gaiman in 1997?

21 A. No. I was not involved with the accounting.

22 Q. Okay.

23 A. I had 27 other hats I was wearing at that
24 time.

25 Q. So you had no knowledge of anyone preparing

1 royalty reports for Neil Gaiman?

2 A. No.

3 Q. Did Todd ever tell you that Neil
4 misrepresented to Todd what the terms of Neil's
5 agreement were with DC Comics?

6 A. No.

7 Q. Did Todd ever tell you that he talked to
8 Terri Cunningham of DC comics about Neil's agreement
9 with DC Comics?

10 A. No.

11 Q. Did you ever review any agreements, any draft
12 agreements or any sort of contracts or agreements with
13 either -- let me back up.

14 Did you ever review any contracts involving
15 DC Comics in order to prepare any information draft,
16 Exhibit 18 or any other documents for Todd McFarlane?

17 A. No.

18 Q. We'll go back to Exhibit 8 now, which I don't
19 think you have.

20 A. Do I have it?

21 Q. I don't think you have it. Pete has it.

22 A. Okay.

23 Q. Okay. Do you recognize 8?

24 A. No.

25 Q. Did Todd ever tell you that he was going to

1 be rescinding or that he was going to be terminating his
2 agreement with Neil Gaiman?

3 A. No.

4 Q. He never told you that "We're not going to be
5 paying Neil Gaiman any more" or words to that effect?

6 A. No. I never had a discussion with Todd about
7 Neil after I moved to L.A. in '98, early '98.

8 Q. You never had any discussions that you can
9 recall with Todd about Neil after that date?

10 A. Un-unh. I think we talked once when his hard
11 cover novel came out that I saw in the store, but --

12 Q. What novel?

13 A. A hard cover novel that Neil had written. A
14 book book, you know, an actual book book.

15 Q. American Gods?

16 A. Yes. I remember seeing it in the store and a
17 couple of my friends had read it and thought it was
18 great.

19 Q. But that's the only discussion that you can
20 remember?

21 A. Yes.

22 Q. So, let me see if I can summarize what you
23 testified to so far.

24 My understanding is that the only facts that
25 you have knowledge of regarding an agreement or a

1 potential agreement between Neil Gaiman and Todd
2 McFarlane is your drafting of Exhibit 18?

3 A. I don't know what exists between Todd and
4 Neil because I was not privy to his conversations.

5 MR. SALSICH: Excuse me for a second. Just
6 so I understand, I think what he's trying to do -- what
7 he is trying to do here now is sort of summarize your
8 testimony and it's important for you at this point to
9 listen carefully to the question he asks --

10 THE WITNESS: Okay.

11 MR. SALSICH: -- and see if you can answer
12 that question.

13 If you need to explain about answering,
14 answer the question and then explain, simply because
15 this is a point to try to clear up the record and your
16 answer there was not necessarily responsive to his
17 question.

18 THE WITNESS: Okay.

19 MR. SIMMONS: And just to clarify I don't
20 mind you doing that, but I just hope we get the same
21 courtesy when Neil is being deposed in terms of speaking
22 objections and so forth.

23 MR. SALSICH: Yes. And again I'll say on the
24 record, you'll find the same for Mike. We're not --
25 whatever the local practice is as far as objections

1 goes, we can be as limited or as verbose, but the goal
2 is always to get a clean record and certainly any
3 courtesies you extend to us we'll extend to you.

4 MR. SIMMONS: That's fine. I'll restate the
5 question. And Pete's right. I'm trying to make sure I
6 understand what the body of your knowledge is about this
7 agreement.

8 Q. Am I right if I say that the only facts that
9 you know about an agreement or a potential agreement
10 between Neil Gaiman and Todd McFarlane are that you
11 drafted Exhibit 18 at the request of Todd McFarlane?

12 A. I drafted Exhibit 18 at the request of Todd
13 McFarlane, yes.

14 Q. No one else talked to you about an agreement
15 between Neil Gaiman and Todd McFarlane?

16 A. No.

17 Q. You were never involved in calculating any
18 royalties for Neil Gaiman pursuant to any agreement with
19 Todd McFarlane?

20 A. No.

21 MR. SIMMONS: We're almost done here.

22 Let me go off for just one minute.

23 (Whereupon, a short recess was then had from
24 12:22 p.m. until 12:25 p.m.)

25 MR. SIMMONS: Mark this.

1 (Deposition Exhibit Number 23 was then
2 marked for identification.)

3 THE WITNESS: Do you want me to review it
4 all?

5 BY MR. SIMMONS:

6 Q. You don't need to read the whole thing.

7 A. Okay.

8 Q. You can look through it if you want. I
9 believe that your signature is on the last page or
10 wherever the signature page is.

11 A. Okay.

12 Q. Do you recognize that document at all?

13 A. Yes.

14 Q. Okay. Can you tell me what it is?

15 A. A license agreement between Capcom, a
16 Japanese video game company, and TMP.

17 Q. And what's your understanding of the general
18 terms of the agreement, or I should say what's the
19 subject matter of the agreement?

20 A. We were going to license them the rights to
21 produce a video game.

22 Q. Did that happen?

23 A. Yes.

24 Q. And did that company end up producing video
25 games?

1 A. One.

2 Q. Just one. What was the name of the video
3 game?

4 A. I believe it was Spawn in the Demon's Hand.

5 Q. Do you know whether the company is still
6 producing that video game?

7 A. No. Or yes, I do and no, they are not.

8 Q. Okay. Do you recall when they stopped
9 producing that video game?

10 A. No, I wouldn't have a specific date.

11 Q. Do you recall negotiating or being involved
12 in the negotiations for any other license agreements
13 between Todd McFarlane Productions or any other company
14 controlled by Todd McFarlane and outside entities,
15 licensing agreements between Todd McFarlane companies
16 and outside entities?

17 A. During what time-frame?

18 Q. I guess, well, 1993 to the present.

19 A. Sure. Yes.

20 Q. Can you tell me what some of those are?

21 A. There was a T shirt deal with Giant
22 Merchandising, a video game deal.

23 Q. Actually, I'll stop you after each one.

24 The T shirt deal, can you explain to me what
25 the products were that were being produced?

1 A. Just silk screen T shirts.

2 Q. Any particular images that were on them that
3 you remember?

4 A. Yes. It was a few different pictures taken
5 from the Spawn movie of Spawn, the character.

6 Q. The Spawn movie, though?

7 A. Correct.

8 Q. Do you remember what the Cogliostro -- or the
9 Cogliostro character was one of the characters on the T
10 shirts?

11 A. I don't think so.

12 Q. And you were going to say there was another
13 license agreement you remember?

14 A. Yes. We did a video game license with Konami
15 to do a color Game Boy deal. We did a video game deal
16 with Sony.

17 Q. Okay. Do you remember -- backing up again --
18 no, that's okay. It's the way I'm doing the questioning
19 here.

20 The first video game deal that you
21 mentioned --

22 A. The Sony.

23 Q. -- or the one prior to Sony. I don't
24 remember the name.

25 A. Konami, K-O-N-A-M-I.

1 Q. Do you recall how many different video games
2 they produced?

3 A. One.

4 Q. Do you remember what the title of that one
5 was?

6 A. No. It was just a color Game Boy.

7 Q. Do you remember what characters, what Spawn
8 characters were involved in the video game?

9 A. Spawn. And then I think we created a bunch
10 of -- it was set in an urban setting, so it was a bunch
11 of your common street thugs, quote, unquote.

12 Q. Were Cogliostro or Medieval Spawn or Angela,
13 were they characters?

14 A. I don't believe so.

15 Q. The Sony video game, do you know what the
16 video game was they produced or what characters --

17 A. Yes. That was a game for Super Nintendo, so
18 that they ended up selling the rights to Acclaim to put
19 out because they were going to abandon development and I
20 wouldn't let them. Sorry.

21 Q. Do you recall whether the Cogliostro,
22 Medieval Spawn or Angela characters were in that video,
23 that video game?

24 A. That's so long ago. I don't believe -- I
25 don't believe so. Yes, I don't remember. No, I don't.

1 Q. That's fine. Any other license agreements
2 you remember?

3 A. Let's see. What else did we do? Trading
4 cards through Inkworks.

5 Q. Were the Angela, Cogliostro and Medieval
6 Spawn characters on those trading cards?

7 A. It was based on action figures that were
8 produced to that point, so I would assume, yes.

9 Q. But you don't know?

10 A. But I don't remember. Yes, I mean I don't
11 know.

12 Q. Any other license agreements?

13 A. Gosh, let's see. What else did we do? Oh,
14 we did a T shirt deal with a Japanese company.

15 Q. Were Angela, Medieval Spawn and Cogliostro
16 used on those T shirts?

17 A. No. That was strictly Spawn.

18 Q. Any other agreements?

19 A. Oh, we did Zippo lighters through a Japanese
20 company.

21 Q. Why don't I just say "the characters." I'll
22 define the characters as --

23 A. I think there was an Angela Zippo lighter
24 created.

25 Q. Okay. But no Medieval Spawn or Cogliostro?

1 A. No.

2 Q. Okay.

3 A. We did telephone cards in Japan.

4 Q. Were any of those characters on telephone
5 cards?

6 A. No. It was strictly Spawn from the movie.

7 Q. Okay.

8 A. We did pogs at one point.

9 Q. Do you know who was the licensee for the
10 pogs?

11 A. A Canadian company out of Toronto. I think
12 it was in Ottawa. I don't remember their name.

13 Q. And do you recall whether any of the
14 characters that I mentioned were on the pogs?

15 A. Yes, I don't remember.

16 I think that might be all. Yes, I think that
17 might be it.

18 Q. Okay. Who manufactures the action figures --
19 who manufactured the action figures embodying the Spawn
20 characters?

21 A. Who manufactured them? I mean, they are
22 produced in China.

23 Q. Okay. Is there a licensee that's in charge
24 of selling the action figures?

25 I want to back up. What's your understanding

1 of how Spawn action figures are sold?

2 What are all the -- who are all the various
3 entities that might be involved in it?

4 A. Well, they are produced by McFarlane Toys
5 which is, I believe, an entity under TMP International.

6 Q. Are you aware of any written licensing
7 agreement between Todd McFarlane Productions and TMP
8 International --

9 A. No.

10 Q. -- for production of those toys?

11 A. No.

12 Q. Are you aware of any written license
13 agreements between Todd McFarlane Productions and any of
14 the other companies that Todd McFarlane may be involved
15 in? And I'll go through some of those. McFarlane
16 Worldwide. I had list here.

17 Oh, well, any other companies that Todd
18 McFarlane is associated with?

19 A. No.

20 Q. Are you aware of any other license
21 agreements?

22 A. No.

23 Q. Okay. Were there any written license
24 agreements between TMP and Image Comics?

25 A. No.

1 MR. SIMMONS: Let me just take one minute and
2 go through my notes and make sure I didn't forget
3 anything, but otherwise I think I'm done.

4 I'm done. Do you have any follow-up?

5 MR. SALSICH: Just one or two, I think.

6 And just for the record, I believe we need to
7 get -- actually this can be off the record.

8 (Discussion off the record.)

9 EXAMINATION

10 BY MR. SALSICH:

11 Q. Terry, I just have a few questions by way of
12 clarification or follow-up.

13 Do you recall earlier in your deposition you
14 were asked some questions about the arrangements that
15 were made between Todd McFarlane Productions and the
16 four guest writers of issues, I believe it's 8, 9, 10
17 and 11 of Spawn?

18 A. Yes.

19 Q. Do you recall talking about specifically your
20 understanding of the deals each of those guest writers
21 received from Todd McFarlane Productions?

22 A. Yes.

23 Q. And I believe you testified that it was your
24 understanding that each of the writers got the same
25 deal, is that correct?

1 A. Yes. I believe that's -- that's what the
2 situation was.

3 Q. Okay. And that you thought that they -- as
4 far as Neil Gaiman goes, you thought he was receiving a
5 flat fee of \$100,000? Do you recall that testimony?

6 A. Yes. I believe everyone was going to receive
7 the same amount so as not to make any of the four
8 superior or lesser to the other three.

9 Q. And my question is -- no, that's okay. Do
10 you have -- were you specifically involved in
11 negotiating the deal between Todd McFarlane Productions
12 and Alan Moore, for example?

13 A. No.

14 Q. And were you specifically involved in
15 negotiating the deal between Todd McFarlane Productions
16 and Neil Gaiman?

17 A. No.

18 Q. Were you specifically involved in negotiating
19 the deal between Todd McFarlane Productions and either
20 of the other two guest writers?

21 A. No.

22 Q. So you're testifying that it's your
23 recollection that each of the writers were supposed to
24 get basically the same deal, correct?

25 A. Yes.

1 Q. Okay. And you thought that was \$100,000 per
2 writer, is that right?

3 A. Yes.

4 Q. But you don't recall and you were not
5 involved with the specific negotiations as to the terms
6 of each writer's deal, is that right?

7 A. No.

8 Q. Who -- this is the last question. Who was
9 the person who negotiated the terms of the deal between
10 Todd McFarlane Productions and each of the guest writers
11 we've talked about?

12 A. That would have been Todd.

13 Q. And you're referring to Todd McFarlane?

14 A. Yes.

15 Q. You also testified, I believe, that from
16 April of 1992 up until February of 1998 when you left to
17 take over the operations or start up the operations of
18 Todd McFarlane Entertainment that that entire time
19 period between '92 and '98 you were an employee of Todd
20 McFarlane Productions, correct?

21 A. Yes.

22 Q. And you were not an employee of any other
23 company during that time, is that right?

24 A. Yes, that's right.

25 Q. Okay. And in all of your dealings with Todd

1 McFarlane during the years between April, 1992 and
2 February of 1998, during that time was Todd McFarlane
3 your boss?

4 A. Yes.

5 Q. Okay. Do you know what his title was, if he
6 had a title?

7 A. Early on we didn't have titles. In the end
8 I'm sure his title probably was Chairman or CEO.

9 Q. But you don't know -- don't recall
10 specifically?

11 A. No.

12 MR. SALSICH: That's all I have.

13 MR. SIMMONS: That's it.

14 MR. LAPPLE: No questions.

15 (Whereupon, the deposition was then
16 concluded at 12:40 p.m.)

17

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TERENCE D. FITZGERALD

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1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)

4 BE IT KNOWN that the foregoing deposition was
5 taken before me, PAUL GROSSMAN, a Notary Public and
6 Certified Court Reporter #50028 in and for the County of
7 Maricopa, State of Arizona; that the witness before
8 testifying was duly sworn by me to testify to the whole
9 truth; that the witness will read and sign the
10 deposition; that the questions propounded to the witness
11 and the answers of the witness thereto were taken down
12 by me in shorthand and thereafter reduced to print by
13 computer-aided transcription under my direction; that
14 the foregoing 61 pages are a true and correct transcript
15 of all proceedings had upon the taking of said
16 deposition, all done to the best of my skill and
17 ability.

18 I FURTHER CERTIFY that I am in no way related
19 to any of the parties hereto, nor am I in any way
20 interested in the outcome hereof.

21 DATED at Phoenix, Arizona, this 21st day of
22 June, 2002.



Paul Grossman
Paul Grossman, Notary Public
AZ CCR #50028